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Fairfield Truck Body Co. and Teamsters Local No. 418 A/W International Brotherhood of Teamsters, AFL-CIO. Case 22-CA-24244

May 8, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Upon a charge and amended charges filed by the Union on October 20, December 18 and 19, 2000, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 15, 2001, against Fairfield Truck and Body Co., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On April 2, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 4, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 8, 2001, extended the time for filing an answer until March 15, 2001, and notified the Respondent that unless an answer were received by the close of business on that date, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Belleville, New Jersey, has been engaged in the repair of trucks and other

related automotive/truck repair work. During the 12-month period immediately preceding issuance of the complaint, the Respondent, in conducting its business operations, provided repair services valued in excess of \$50,000 for enterprises within the State of New Jersey, each of which other enterprises are directly engaged in interstate commerce, and purchased and received at its Belleville, New Jersey facility, goods valued in excess of \$50,000 directly from points outside the State of New Jersey and from other enterprises located within the State of New Jersey, each of which other enterprises had received those goods directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, George DeRosa has held the position of president of the Respondent, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute an appropriate unit (the unit) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All welders "A," welders "B" and all helpers.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from July 1, 1997 through July 1, 2000.

At all times since July 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 28, 2000, and on dates thereafter including June 19 and July 6, 2000, the Union requested that the Respondent bargain collectively for a successor collective-bargaining agreement. Since about April 28, 2000, the Respondent has failed and refused to bargain.

Since about July 1, 2000, the Respondent has failed to make payments to the Union's Health & Welfare and Pension funds as required by the expired collective-bargaining agreement. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to bargain with the Union as the exclusive representative of the unit employees concerning a successor collective-bargaining agreement to replace the contract that expired on July 1, 2000. Further, we shall order the Respondent to make the contractually required contributions to the Union's Health & Welfare and Pension funds on behalf of its unit employees. In addition, we shall order the Respondent to make the unit employees whole by making all contractually required contributions to the funds that it failed to make since about July 1, 2000, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent also shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make such required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Fairfield Truck Body Co., Belleville, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with Teamsters Local No. 418, A/W International Brotherhood of Teamsters, AFL-CIO as the exclusive collective bargaining representative of the employees in the following appropriate unit:

All welders "A," welders "B" and all helpers.

(b) Failing to make payments to the Union's Health & Welfare and Pension funds on behalf of the unit employees as required by the Respondent's most recent collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees over the terms of a successor collective-bargaining agreement and, if an agreement is reached, embody the understanding in a signed agreement.

(b) Make all delinquent payments to the Union's Health & Welfare and Pension funds required by the most recent collective-bargaining agreement that have not been made since about July 1, 2000, as set forth in the remedy section of this decision.

(c) Make the unit employees whole for any expenses ensuing from its failure to make the required payments to the Union's Health & Welfare and Pension funds, as set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Belleville, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 8, 2001

John C. Truesdale,	Chairman
Wilma B. Liebman,	Member
Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to meet and bargain with Teamsters Local No. 418, A/W International Brother-

hood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All welders "A," welders "B" and all helpers.

WE WILL NOT fail to make payments to the Union's Health & Welfare and Pension funds on behalf of the unit employees as required by our most recent collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees concerning the terms of a successor collective-bargaining agreement and, if an agreement is reached, embody the understanding in a signed agreement.

WE WILL make all delinquent payments to the Union's Health & Welfare and Pension funds required by the most recent collective-bargaining agreement that have not been made since about July 1, 2000.

WE WILL make the unit employees whole for any expenses ensuing from our failure to make the required payments to the Union's Health & Welfare and Pension funds, with interest.

FAIRFIELD TRUCK BODY CO.